

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA)

Plaintiff,)

v.)

TWENTY-EIGHT THOUSAND, EIGHT-
HUNDRED-EIGHTY DOLLARS AND
NO/100 (28,880.00) IN U.S. CURRENCY,

Defendant.)

Case No. C05-0347-JPD

ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION TO DEEM CERTAIN
MATTERS ADMITTED

I. INTRODUCTION AND SUMMARY CONCLUSION.

This case arises from the seizure of \$28,880.00 by Drug Enforcement Agency ("DEA") officers at Seattle-Tacoma International Airport from Cach Quan Huynh on September 16, 2004. Ms. Hoi Nguyen, Mr. Huynh's mother, claims the currency is rightfully hers because it represents the repayment of a legitimate loan. She is proceeding through counsel and with the assistance of Vietnamese translators in this action.

On November 1, 2005, plaintiff served claimant with twenty-one requests for admission, together with over 400 pages of supporting exhibits. Dkt. No. 35, Ex. 1. Under Fed. R. Civ. P. 36(a), responses were due by December 1, 2005. On December 8, 2005, claimant submitted an unsigned set of responses to plaintiff's counsel by electronic mail. *Id.* at Exs. 2, 3. Although claimant admitted several of the requests, she denied many others. In

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01 several instances, she responded, “unknown and therefore denied,” “personally unknown but
02 this is what my son told me,” “not a proper question,” and other phrases to this effect. *Id.* at
03 Ex. 2. She also made handwritten notations that she “move[d] to strike” several of the
04 requests. *Id.*

05 This matter comes before the Court upon plaintiff’s motion to deem certain requests
06 admitted, or in the alternative, for determination of the sufficiency of answers and objections to
07 plaintiff’s request for admissions. Dkt. No. 35. Plaintiff argues that all of the requests should
08 be admitted because claimant failed to respond timely to them. The government argues that
09 the issues addressed by the requests are not seriously in dispute and that it will incur significant
10 expense to present the evidence to the Court. If the Court allows withdrawal of the
11 admissions, plaintiff argues that many of claimant’s denials lack adequate justification. The
12 government requests that the claimant be required to serve a complete set of fully responsive
13 answers.

14 In response, claimant’s counsel has indicated that he was “preoccupied” with trial
15 matters in an unrelated case and that he “overlooked” the requests for admission. Dkt. No. 38.
16 Claimant moves the Court to rule on her objections to the requests and submits that plaintiff
17 “has been abusive in its litigation practices in this action.” *Id.* In reply, the government
18 reiterates its motion and argues that claimant’s response should be stricken as untimely. Dkt.
19 No. 39.¹ Having carefully considered the parties’ papers, supporting documents, and the
20 record, the Court GRANTS IN PART and DENIES IN PART plaintiff’s motion to deem
21 certain matters admitted.

22 Requests 1 through 8 and 15 through 21 are deemed admitted because claimant
23 answered them either in the affirmative or could have reasonably ascertained information
24 enabling her to do so. Fed. R. Civ. P. 36 (a) states in part: “[a]n answering party may not give

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26 ¹The motion to strike is denied.

01 lack of information of knowledge as a reason for failure to admit or deny unless the party
02 states that the party has made reasonable inquiry and that the information known or readily
03 obtainable by the party is insufficient to enable the party to admit or deny.”

04 However, as to requests 9 through and including 14, the claimant is authorized to
05 withdraw the admissions which became operative by virtue of the Rule, because she lacked the
06 knowledge and expertise to interpret documents submitted by plaintiff relating in support of
07 admission.

08 II. ANALYSIS

09 A. Plaintiff's Requests For Admissions Are Deemed Admitted.

10 Rule 36 allows parties to “serve upon any other party a written request for . . .
11 admission, for purposes of [a] pending action[.]” Fed. R. Civ. P. 36(a). If the party served
12 with such a request fails to respond within thirty days of service of the request, the matter is
13 deemed admitted. *Id.*; *Hadley v. United States*, 45 F.3d 1345, 1348 (9th Cir. 1995). While
14 the court has discretion to permit untimely answers, it may do so only for compelling
15 circumstances. *French v. United States*, 416 F.2d 1149 (9th Cir. 1968). Here, statements by
16 claimant’s counsel that he was “preoccupied” with trial matters in an unrelated case and that
17 he “overlooked” the requests for admission do not provide compelling circumstances. Dkt.
18 No. 38. Therefore, claimant is deemed to have admitted each request for admission.

19 B. Claimant May Withdraw Admissions 9 Through 14.

20 Although claimant is deemed to have admitted all of the requests for admission, those
21 admissions may be withdrawn or amended upon motion by claimant. Fed. R. Civ. P 36(b).
22 Such a motion, however, may be granted only upon a showing that (1) “the presentation of the
23 merits of the action will be subserved;” and (2) the party who obtained the admission will not
24 be prejudiced by the withdrawal or amendment. *Id.* The first prong of this test is satisfied
25 when allowing the admissions would “practically eliminate any presentation of the merits of the
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01 case.” *Hadley*, 45 F.3d at 1348. The second prong requires the party opposing withdrawal to
02 show that it will face difficulty in proving its case because of the unavailability of key
03 witnesses, the sudden need to obtain more evidence, or because trial has already commenced.
04 *Id.* at 1348-49; *Sonoda v. Cabrera*, 255 F.3d 1035, 1040 (9th Cir. 2001). The mere fact that
05 the government must prove the unadmitted fact to the fact-finder is insufficient. *Hadley*, 45
06 F.3d at 1348.

07 The Court construes claimant’s response to plaintiff’s motion as a motion to withdraw
08 the deemed admissions. Unfortunately, this represents another example of claimant’s counsel
09 ignoring the plain language of the Rule.² However, due to the potential harm to the claimant,
10 the Court will treat the opposition as a motion to withdraw the admissions. Although
11 presentation of the merits would not be eliminated by allowing admissions of Requests 9
12 through 14 to remain, it would be significantly diminished. For instance, claimant’s admission
13 that the currency at issue “had recently been in close or actual proximity to a significant
14 amount of narcotics, and was not the result of any alleged innocent environmental
15 contamination,” would seriously limit any argument that the currency was not associated with
16 the trade of illicit drugs.

17 Additionally, it is not clear that the government would be prejudiced if certain
18 admissions were withdrawn. Plaintiff has already conducted depositions of the relevant parties
19 and made preparations to call relevant witnesses. Dkt. Nos. 18-34. Also, trial is still more
20 than three months away. Requests 11 through 14 relate to actions of a drug-sniffing dog
21 named Jinx, the dog’s qualifications, and the scientific analysis of detectability of cocaine on
22 United States currency. Plaintiff argues that many of the requests directed towards claimant
23 may not be in serious contention and that proving such facts may require an expert. The fact
24 that the party who initially obtained the admission will now have to prove it to the fact-finder

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26 ²See Fed. R. Civ. P. 36(b).

01 does not, by itself, establish prejudice. *Hadley*, 45 F.3d at 1348.

02 The Court orders as follows:

03 (1) Request for admission 1 is deemed ADMITTED and remains admitted because
04 claimant could have reasonably determined when the 2000 Vietnamese New Year began by
05 consulting a calendar, including the calendar materials submitted by plaintiffs with the requests
06 for admission. Dkt. No. 35, Ex. 1, Pt. 2.

07 (2) Requests 2 though 4 were admitted by plaintiff.

08 (3) Requests 5 through 8 are also deemed ADMITTED and remain admitted.
09 Although claimant's responses indicate she had "no personal knowledge" of these requests, she
10 has indicated that she inquired about them with her son and was able to answer them. The
11 Court also notes that the basis for the request asserted in request number 7, a DEA report, was
12 provided to plaintiff. Dkt. No. 35, Ex. 8.

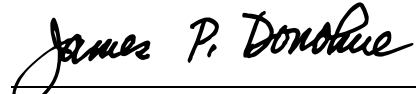
13 (4) The admissions by operation of the Rule to Requests 9 through 14 are deemed
14 WITHDRAWN. These requests relate to the training and reliability of "Jinx," the police dog
15 who identified traces of illicit drugs on the seized currency. They also relate to the
16 qualifications and conclusions of plaintiff's expert witness regarding Jinx's findings. While
17 plaintiff provided claimant with documents tending to support an admission, plaintiff is not in a
18 position to evaluate the accuracy and weight of those documents reliably and is therefore not
19 required to admit them.

20 (5) Requests 15 through 20 are deemed ADMITTED and remain admitted.
21 Requests 15 through 17 relate to facts described in a United States Customs report of an
22 encounter with claimant's son in November 2002. Plaintiff provided claimant with a copy of
23 the report and claimant's son testified to many of the events involved. Dkt. No. 35, Exs. 7, 10.
24 Hence, claimant could easily have verified the accuracy of these requests.

01 III. CONCLUSION

02 For the reasons discussed above, claimant is deemed to have admitted all requests for
03 admission submitted by plaintiff on November 1, 2005, except requests 9 through 14.

04 DATED this 13th day of January, 2006.

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06 JAMES P. DONOHUE
07 United States Magistrate Judge
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